

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

TERRY E. DeMARR,

Civil No. 06-3663 (PJS/AJB)

Petitioner,

v.

ORDER ADOPTING REPORT AND
RECOMMENDATION

R. L. MORRISON,

Respondent.

Terry E. DeMarr, Florence, CO 81226, *pro se*.

James E. Lackner, Omar Atiq Syed, Assistant United States Attorneys, UNITED STATES ATTORNEY'S OFFICE, 300 South Fourth Street, Suite 600, Minneapolis, MN 55415, for respondent.

Petitioner Terry E. DeMarr has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. This matter is before the Court on DeMarr's objection to Magistrate Judge Arthur J. Boylan's Report and Recommendation ("R&R") dated September 12, 2006. Because the Bureau of Prisons recently transferred DeMarr to the Federal Correctional Complex in Florence, Colorado, Judge Boylan recommends transferring this action to the United States District Court for the District of Colorado.

DeMarr raises two objections: he contends that he mailed his petition while still incarcerated in Duluth, Minnesota, and he asks that the Court's final ruling wait until his new attorney is able to review the R&R. As Judge Boylan found, however, the Clerk of Court did not accept DeMarr's initial filing because it was not accompanied by the filing fee or an application to proceed *in forma pauperis*. Although, as DeMarr points out, he was unable to send the filing fee with his petition due

to circumstances beyond his control, it is nevertheless true that his petition was not successfully filed until after he was transferred to Colorado. While the Court is sympathetic to DeMarr's desire to have his new attorney review this matter, the docket reflects that he does not yet have an attorney. More importantly, as there is no arguable basis for the Court to retain jurisdiction, professional legal assistance would in any case be unavailing.

ORDER

Accordingly, based upon the foregoing, and on all of the files, records and proceedings herein, the Clerk of Court is DIRECTED TO TRANSFER this case to the United States District Court for the District of Colorado.

Dated: October 11, 2006

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge